

**COVID-19 SMALL BUSINESS RELIEF AND EMPLOYEE RETENTION GRANT
PROGRAM MANAGEMENT AGREEMENT**

This **COVID-19 SMALL BUSINESS RELIEF AND EMPLOYEE RETENTION GRANT PROGRAM MANAGEMENT AGREEMENT** (this "Agreement") is made this ___ day of _____, 2020 (the "Effective Date"), between the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the "City") and **VYSTAR CREDIT UNION**, a Florida chartered credit union ("VyStar").

**Article 1.
PRELIMINARY STATEMENTS**

1.1 Background.

On March 9, 2020 the Governor of the State of Florida issued Executive Order 20-52 declaring a state of emergency in Florida related to the Novel Coronavirus Disease 2019 ("COVID-19"). Thereafter, on March 13, 2020, Mayor Curry of the City issued Emergency Executive Proclamation 2020-001, proclaiming and declaring a state of emergency associated with COVID-19 in the Consolidated City of Jacksonville. Also, on March 13, 2020 President Donald J. Trump declared a National Emergency concerning the COVID-19 outbreak. The citizens and businesses of Duval County are suffering severe economic impacts stemming in part from national, state and local measures closing certain businesses, public schools, public beaches, imposing emergency work-at-home requirements and limiting public gatherings (the "Emergency Measures") in an effort to slow the infection rate of COVID-19.

As a result of the foregoing, VyStar has developed its COVID19 Response Business Community Relief Loan program (the "VyStar Small Business Relief Loan Program") to provide low cost, fixed interest rate loans to eligible small businesses located within Duval County. The loans will have a fixed interest rate of 5.99%, with a maximum loan amount of \$100,000, which will be interest only for the first loan year and thereafter converting to a five year term principal and interest traditional amortizing loan, for a cumulative loan term of six (6) years. The City's financial obligations hereunder are limited to a maximum, cumulative loan pool made available by VyStar pursuant to its loan program in the amount of \$50,000,000.

Pursuant to this Agreement, the City is implementing its COVID-19 Small Business Relief and Employee Retention Grant Program (the "City Small Business Relief Program") also to provide financial assistance to eligible small businesses located in Duval County, in an effort to partially offset the economic and job losses suffered by such businesses as a result of COVID-19 and the Emergency Measures related thereto, and VyStar has agreed to serve as the City's grants administrator and underwriter with regard to the City Small Business Relief Grant Program in accordance with the terms of this Agreement.

For each loan VyStar makes pursuant to the VyStar Small Business Relief Loan Program, the City will provide its grants to each such approved borrower, provided such grant recipient executes at loan closing the Joinder and Consent document attached hereto as **Exhibit B** and incorporated herein by this reference.

1.2 **Authority.**

The City Council has authorized execution of this Agreement pursuant to City Ordinance 2020-____-E.

1.3 **Coordination by City.**

The City hereby designates the City's Director of Finance and Administration or his or her designee to be the Program Coordinator who will, on behalf of the City, coordinate with VyStar and administer this Agreement according to the terms and conditions contained herein and in the Exhibit(s) attached hereto and made a part hereof. It shall be the responsibility of VyStar to coordinate all project related activities and all matters under this Agreement with the designated Program Coordinator, unless otherwise stated herein.

1.4 **Maximum Indebtedness.**

The maximum indebtedness of the City for all fees, reimbursable items or other costs pursuant to this Agreement shall not exceed the sum of TWENTY-SIX MILLION AND NO/100 DOLLARS (\$26,000,000.00), however, only NINE MILLION AND NO/100 (\$9,000,000.00) will be encumbered at the time of execution of this Agreement by the City. Additional funds may be added to this Agreement by City Council through its annual budget ordinance or via stand-alone legislation appropriating additional funds to this Agreement.

1.5 **Availability of Funds.**

The City's obligations under this Agreement are contingent upon availability of lawfully appropriated funds for the City Small Business Relief Program and this Agreement.

Article 2.

TERM; RENEWAL; TERMINATION FOR CONVENIENCE

2.1 **Term.**

The initial term of this Agreement shall commence on the Effective Date hereof and shall continue in full force and effect for six (6) years and six (6) months, until _____, 2026, unless sooner terminated. The enrollment period for grant recipients shall extend from the Effective Date for an initial six (6) month term, until _____, 2020. The enrollment period may be extended for up to an additional six (6) months upon the mutual agreement of the parties, and if exercised the term of the Agreement shall also extend an additional six (6) months. To the extent the initial six (6) month enrollment period is extended, the City may terminate the second enrollment period for convenience by providing forty-five (45) days written notice thereof to VyStar at its address as set forth in Section 6.4 below.

2.2 **Approval of Agreement.**

By the execution hereof, the parties certify as follows:

- (a) VyStar certifies that

- (i) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the particular VyStar entity;
 - (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the Agreement is binding upon VyStar and enforceable against it in accordance with its terms;
 - (iii) the person or persons executing this Agreement on behalf of VyStar are duly authorized and fully empowered to execute the same for and on behalf of VyStar;
 - (iv) VyStar and each entity composing VyStar is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida; and
 - (v) VyStar, its business operations, and each person or entity composing VyStar are in compliance with all federal, state and local laws.
- (b) The City certifies that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

Article 3.

CITY SMALL BUSINESS RELIEF PROGRAM GRANTS

3.1 City Small Business Relief Program Grants.

Pursuant to the terms and conditions of this Agreement, VyStar will provide to the City underwriting and processing services attendant to the management and operation of grants under the City's Small Business Relief Program (collectively, the "Grants"). The following minimum requirements must be satisfied in order for a loan applicant to be eligible to participate in the City's Small Business Relief Program:

- (a) Business must have a physical location within Duval County at which employees work;
- (b) Business must have demonstrated at least one (1) year in operations and provide most recent year's filed tax returns for the business and all owners;
- (c) Business must have between 2 and 100 employees in addition to the business owners;
- (d) Business must be able to demonstrate negative economic impacts from COVID-19;

Any business types VyStar excludes from their standard lending criteria shall also be excluded from eligibility under the City's Small Business Relief Program, as well as any businesses engaged in any illegal activity.

VyStar's loan requirements and application process for its loans are attached hereto as **Exhibit A** and shall also be applicable to eligibility to the City's Small Business Relief Program.

As between the City and VyStar, VyStar shall be solely responsible for any and all credit losses arising under or related to loans issued pursuant to its VyStar Small Business Relief Loan Program.

3.2 Payment of City Small Business Relief Program Grants.

Upon approval of a loan application pursuant to the VyStar Small Business Relief Loan Program, VyStar will provide email notice to the City at its email addresses as set forth in Section 6.4 below, providing the approved small business' legal name, address, loan term, loan interest rate and loan amount, as well as the Joinder and Consent document attached hereto as **Exhibit B** duly executed by the approved small business. Failure of an approved business to execute the Joinder and Consent document at loan closing shall result in ineligibility of the business to participate in the Program authorized hereby. Upon execution at loan closing of the Joinder and Consent by the approved business, a grant recipient is eligible for the following economic relief grants, consistent with and pursuant to the terms of this Agreement:

- (a) A \$250 servicing fee for each approved loan in excess of \$5,000 payable by the City to VyStar on behalf of the grant recipient at or near loan closing and after execution by the business at loan closing of the Joinder and Consent document attached hereto as **Exhibit B**;
- (b) A \$1,000 one-time cash payment to the first 3,000 loan recipients under the Program, based on actual loan closings, advanced to the grant recipient payable by VyStar at loan closing and reimbursed to VyStar by the City;
- (c) A grant equal to the interest owed by a grant recipient for year one (1) of the loan (i.e., total interest from loan inception through the one (1) year anniversary of the loan closing date), payable in arrears on a monthly basis;
- (d) Provided the grant recipient has retained fifty percent (50%) of its February 29, 2020 employment levels as reported to the City by an eligible grant recipient as required by Section 4.1 below, a grant payable on a monthly basis equal to the interest owed for subsequent loan years; the City shall notify VyStar by April 30 of each grant year of any grant recipients who have been deemed ineligible to receive such grants, and from and after the date of such notice the City shall have no further obligations to make such grants as to any such grant recipient and the grant recipient shall be responsible for all interest and principal owed on the remaining term of the loan;
- (e) Provided the grant recipient has retained one hundred percent (100%) of its February 29, 2020 employment levels as reported to the City by the grant recipient consistent with the requirements of Section 4.1 below, commencing with the ending balance of the first year of the loan and each year thereafter, a grant payable on an annual basis equal to ten percent (10%) of the principal amount then outstanding on the loan, capped at a maximum of fifty percent (50%) of the original principal amount of the loan for the full term of the loan; the City shall notify VyStar by April 30 of each grant year of any grant recipients who have been deemed ineligible to receive such grants, and from and after the date of such notice the City shall have no further obligations to make such grants as to

any such grant recipient and the grant recipient shall be responsible for all interest (if not otherwise eligible under subparagraph (d) above) and principal owed on the remaining term of the loan.

With the consent of each grant recipient pursuant to the Joinder and Consent attached hereto as **Exhibit B**, the City may make the Grant payments to VyStar on behalf of the grant recipient. The Joinder and Consent shall provide that should the grant recipient be deemed ineligible under either Section 3.2(d) or Section 3.2(e), that the grant recipient shall continue to be liable for all amounts due and owing (including without limitation interest payments) under the terms of the loan.

Article 4. REPORTING

4.1 Reporting.

As soon as is administratively practicable, upon approval by VyStar of a loan application under the VyStar Small Business Relief Loan Program, VyStar shall provide written notice thereof to the City at its address and designated email address set forth in Section 6.4 below, inclusive of the small business legal name, loan amount, principal and interest payments, loan interest rate, and loan term in order for the City to track and monitor its payment obligations for each grant recipient. After a loan closing, on a monthly basis VyStar shall provide to the City information and documentation in pdf and excel format sufficient for the City to verify and calculate the interest and principal amounts as to each current loan made under the VyStar Small Business Relief Loan Program for which the borrower thereunder has also duly executed a Joinder and Consent as attached hereto as **Exhibit B** and is otherwise eligible to participate in the Program. The parties shall work together to develop a quarterly/monthly ACH payment file that remits all duly authorized grant payments, with VyStar providing supporting documentation showing the composition of the total payment amount broken down by grantee.

Grant recipients are required to provide to the City documentation and information reasonably acceptable to the City of the number of full-time and part-time employees of the Grant Recipient as of February 29, 2020 within thirty days of execution of the Joinder and Consent. Failure by the grant recipient to timely provide such information and documentation to the City shall result in such grant recipient being ineligible to participate in the Program authorized hereby. Thereafter, on an annual basis by March 30 of each loan year during the term thereof, a grant recipient shall provide documentation and information in form and content reasonably acceptable to the City regarding employment and wages as of the immediately prior February 28 date. A sample of the general forms of such reports is attached hereto as **Exhibit C**, however, the City reserves the right to request specific data necessary to verify employment and wages that may vary from the form attached as **Exhibit C**. Failure to timely do so shall result in termination of the grant recipient's eligibility to participate in the Program. **Time is of the essence of each grant recipient's reporting obligations under this Section 4.1.**

VyStar's obligation to submit such reports shall continue until a grant recipient is no longer eligible for grant payments pursuant to this Agreement.

VyStar will notify the City via its email addresses in Section 6.4 below of defaulted borrowers such that the City may terminate grant payments to such grantee and/or VyStar that is in default of their

VyStar loan documents. **A default in excess of sixty (60) days shall result in the termination of a grant recipient's participation in the program.**

Within thirty (30) days following the request of the City, VyStar shall provide the City with additional information reasonably requested by the City in order to calculate the grant payments.

**Article 5.
DEFAULTS AND REMEDIES**

5.1 General.

An “Event of Default” under this Agreement shall consist of the breach of any covenant, agreement, representation, provision, or warranty (that has not been cured prior to the expiration of any applicable grace period or notice and cure period contained in this Agreement or such other documents, as applicable) contained in this Agreement.

If any such Event of Default occurs under this Agreement, the non-breaching party may at any time or from time to time proceed to protect and enforce all rights available to the non-breaching party under this Agreement by suit in equity, action at law or by any other appropriate proceeding whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations.

5.2 Breach by VyStar

No occurrence shall constitute an Event of Default until the City has given VyStar written notice of the default and thirty (30) calendar days within which to cure the default. If any default cannot reasonably be cured within the initial thirty (30) calendar days, no Event of Default shall be deemed to occur so long as the defaulting party has commenced and is diligently implementing a cure within such thirty (30) day period and diligently pursues such cure to a conclusion. Notwithstanding the foregoing, VyStar shall immediately and automatically be in default with respect to this Agreement, and the City shall not be required to give VyStar any notice or opportunity to cure such default (and thus the City shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

Should VyStar make any assignment for the benefit of creditors; or should a receiver, liquidator, or trustee of VyStar of any of VyStar's property be appointed; or should any petition for the adjudication of bankruptcy, reorganization, composition, arrangement or similar relief as to VyStar, pursuant to the Federal Bankruptcy Act or any other law relating to insolvency or relief for debtors, be filed by VyStar; or should VyStar be adjudicated as bankrupt or insolvent; or should VyStar be liquidated or dissolved; or should an involuntary petition seeking to adjudicate VyStar as a bankrupt or to reorganize VyStar be filed against VyStar and remain undismissed for a period of ninety (90) days after the filing date thereof.

5.3 Breach by City.

No occurrence shall constitute an Event of Default until VyStar has given the City written notice of the default and thirty (30) calendar days within which to cure the default. If any default cannot reasonably be cured within the initial thirty (30) calendar days, no Event of Default shall be deemed to occur so long as the defaulting party has commenced and is diligently implementing a cure within such

thirty (30) day period and diligently pursues such cure to a conclusion. If the City commits an Event of Default under this Agreement, VyStar shall have, in addition to the remedies expressly provided herein, all remedies allowed by law or equity; provided, however, that in no event shall the City be liable to VyStar for any punitive, speculative, or consequential damages of any kind, and notwithstanding anything herein, in no event shall the City be liable for any costs or damages exceeding the maximum indebtedness amount described in Section 1.4 for any and all City obligations at issue.

Article 6. GENERAL PROVISIONS

6.1 Non-liability of City Officials.

No member, official or employee of the City shall be personally liable to VyStar or to any Person with whom VyStar shall have entered into any contract, or to any other Person, in the event of any default or breach by the City, or for any amount which may become due to VyStar or any other Person under the terms of this Agreement.

6.2 Force Majeure.

No party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, severe weather and other acts or failures beyond the control or without the control of any party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial liability of a party.

6.3 Offset.

City shall have the right to offset any amount owed by VyStar under or in connection with this Agreement against any payments owed by City under this Agreement. Such offsets shall be in addition to any other rights or remedies available under this Agreement and applicable law.

6.4 Notices.

All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

(a) the City:

City of Jacksonville
Finance and Administration Department
117 West Duval Street, Suite 310
Jacksonville, Florida 32202
Attn: Patrick Greive; pgreive@coj.net
Attn: Randall Barnes; rbarnes@coj.net

With a copy to:

City of Jacksonville
Office of the General Counsel
City Hall-St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

(b) VyStar:

VyStar Credit Union
Attn: Jenny H. Vipperman, Chief Lending Officer
76 S. Laura St.
Jacksonville, Florida 32202
vippermanj@vystarcu.org

6.5 Time.

Time is of the essence in the performance by any party and all grant recipients of their obligations hereunder.

6.6 Entire Agreement.

This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

6.7 Amendment.

This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties.

6.8 Waivers.

Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with

respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

6.9 Indemnification.

VyStar shall indemnify, hold harmless and defend the City from and against, without limitation, any loss, claim, suit, action, damage, injury, liability, fine, penalty, cost, and expense of whatsoever kind or nature (including without limitation court, investigation and defense costs and reasonable expert and attorneys' fees and costs) related to any suits and actions of any kind brought against the City or other damages or losses incurred or sustained, or claimed to have been incurred or sustained, by any person or persons arising out of or in connection with any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of VyStar or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to VyStar's performance under this Agreement or relating to the Program, except to the extent cause by the sole negligence of the City. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City's sovereign immunity beyond the limitations stated in Section 768.28, Florida Statutes.

This indemnification shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this Agreement or otherwise. The term "City" as used in this Section 6.9 shall include all City's members, officers, officials, employees and agents.

6.10 Severability.

The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.11 Compliance with State and Other Laws.

In the performance of this Agreement, VyStar must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

6.12 Non-Discrimination Provisions.

In conformity with the requirements of Section 126.404, *Ordinance Code*, VyStar represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. VyStar agrees that, on written request, it

will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter 126, Part 4 of the *Ordinance Code*, *provided however*, that VyStar shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. VyStar agrees that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section 6.12 shall be incorporated into and become a part of the subcontract.

6.13 Contingent Fees Prohibited.

In conformity with Section 126.306, *Ordinance Code*, VyStar warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for VyStar, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for VyStar, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

6.14 Ethics.

VyStar represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code*.

6.15 Conflict of Interest.

The parties will follow the provisions of Section 126.110, *Ordinance Code* with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

6.16 Public Entity Crimes Notice.

In conformity with the requirements of Section 126.104, *Ordinance Code* and Section 287.133, Florida Statutes, the parties agree as follows:

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of \$35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

6.17 Survival.

Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain in effect. Without limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Agreement and all provisions relating to the City's right to conduct an audit shall survive the expiration or termination of this Agreement.

6.18 Incorporation by Reference.

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

6.19 Order of Precedence.

In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of precedence shall be: 1) any fully executed amendment; 2) provisions in this Agreement; and 3) exhibits to this Agreement.

6.20 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Execution by electronic means and delivery of a counterpart by electronic means shall be valid for all purposes.

6.21 Independent Contractor.

In the performance of this Agreement, VyStar will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the City. VyStar and its employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by VyStar in the performance of this Agreement.

6.22 Retention of Records/Audit

VyStar agrees:

- (a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.
- (b) To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City under this Agreement. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the City.

- (c) Upon demand, at no additional cost to the City, to facilitate the duplication and transfer of any records or documents during the required retention period.
- (d) To assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the City, including but not limited to the City Council auditors.
- (e) At all reasonable times for as long as records are maintained, upon at least thirty (30) days prior written notice to VyStar, to allow persons duly authorized by the City, including but not limited to the City Council auditors, full access to and the right to examine any of VyStar's contracts and related records and documents, regardless of the form in which kept.
- (f) To ensure that all related party transactions are disclosed to the City.
- (g) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement.
- (h) Upon at least thirty (30) days prior written notice to VyStar, to permit persons duly authorized by the City, including but not limited to the City Council auditors, to inspect and copy any records, papers, documents, facilities, goods and services of VyStar which are relevant to this Agreement, and to interview any employees and subcontractor employees of VyStar to assure the City of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the City will deliver to VyStar a written report of its findings and request for development by VyStar of a corrective action plan where appropriate. VyStar hereby agrees to timely correct all deficiencies identified in the corrective action plan.
- (i) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the City's invoice.

6.23 Exemption of City.

Neither this Agreement nor the obligations imposed upon the City hereunder shall be or constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of the City. Payment or disbursement by the City of any loan or grant amount hereunder is subject to the availability of lawfully appropriated funds. If funds are not available pursuant to a lawful appropriation thereof by the City Council, this Agreement shall be void and the City shall have no further obligations hereunder.

6.24 Parties to Agreement; Successors and Assigns.

This is an agreement solely between the City and VyStar. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Agreement shall be binding upon VyStar and VyStar's successors and assigns, and shall inure to the benefit of the City and its successors and assigns. However, VyStar shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith, without the prior written

consent of the City, which consent may be withheld in the sole discretion of the City for any reason or no reason.

6.25 Venue; Applicable Law.

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the Federal District Court for the Middle District of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

6.26 Civil Rights.

VyStar agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

6.27 Further Assurances.

VyStar will, on request of the City,

- (a) promptly correct any defect, error or omission herein or in any document executed in connection herewith (collectively the "Program Documents");
- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Program Documents and to identify and subject to the liens of the Program Documents any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the subject property;
- (c) execute, acknowledge, deliver, procure, file or record any documents or instruments deemed necessary, desirable or proper by the City to protect the liens or the security interest under the Program Documents against the rights or interests of third persons; and
- (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Program Documents and this Agreement.

6.28 Exhibits.

In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

6.29 **Construction.**

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. VyStar further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

6.30 **Further Authorizations.**

The parties acknowledge and agree that the Mayor of the City, or his designee, and the City's Corporation Secretary, or their respective designees, are hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement and the Resolution.

6.31 **Attorney's Fees.**

Each party shall be responsible for its own attorneys' fees and costs in connection with any legal action related to this Agreement.

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor
Date: _____

FORM APPROVED:

Office of the General Counsel

WITNESS:

VYSTAR CREDIT UNION

Print Name: _____

By: _____
Name: _____
Its: _____
Date: _____

Print Name: _____

Encumbrance and funding information for internal City use:

Account..... _____

Amount.....\$ _____

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent check request[s], as specified in said Contract.

Director of Finance
City Contract # _____

Contract Encumbrance Data Sheet follows immediately.

Exhibit A

VyStar Loan Requirements and Process

The following requirements are specific to the COVID RESPONSE Business Community Relief Loan, some of which are reduced from VyStar's traditional underwriting requirements.

REQUIREMENTS INCLUDE:

- Business must be or must become a member of VyStar Credit Union – all businesses operating in Duval County are eligible.
- Business must have at least one (1) year in operations (three (3) year requirement waived) and provide most recent year's filed tax returns for business and all owners.
- Business must have between 2 and 100 employees in addition to business owners.
- While personal guarantee is required from all business owners, minimum personal credit score of 720 is waived for this program.
- Signed loan application is required.

Application and Funding Process

For an expedited experience, the following application and funding processes will apply to all COVID19 RESPONSE Business Continuity Loans.

THE SMALL BUSINESS WILL:

- Complete a VyStar business loan application. List COVID-19 loan as the "Purpose of Loan".
- Submit the application by emailing it to: jaxreliefloan@vystarcu.org.
 - Please remember to include all required information with your signed application.
- A loan decision will be communicated to the business owner within three (3) business days of receipt of completed loan application.
- If approved, loan documents will be sent via DocuSign within one (1) business day from approval.
- After loan documents are completed, funds will be available for use within one (1) business day from completion of DocuSign.
 - Advances can be requested by emailing a completed draw form to:
BusinessLoanServicing@vystarcu.org.

**Undesirable
Loans
Examples**

The following types of businesses are generally, though not always, considered undesirable loans.

- Adult entertainment industry
- Amusement parks
- Bars
- Casinos and gambling establishments
- Dry cleaners locations with hazardous chemicals on-site
- Gas stations
- Marijuana/Cannabis related
- Meat packers/processors/slaughtering operations
- Time-sharing and health club facilities
- Waste disposal firms/landfills/handlers of environmental contaminants

Exhibit B

Joinder and Consent of Grant Recipient

This Joinder and Consent of Grant Recipient (“Joinder and Consent”) is executed as of this ___ day of _____, 2020, by _____, a _____ corporation/limited liability company (the “Grant Recipient”). Grant Recipient acknowledges and agrees it has received a copy of the COVID-19 Small Business Relief and Employee Retention Grant Program Management Agreement between the City of Jacksonville and VyStar Credit Union dated April __, 2020 (the “Agreement”).

Contemporaneous with the execution of this Joinder and Consent, Grant Recipient has executed and promissory note and related loan documents (collectively, the “Loan Documents”) with VyStar Credit Union (“VyStar”) pursuant to VyStar’s Small Business Relief Loan program.

Grant Recipient hereby joins in and consents to the Agreement for the purposes of participating in the Program (as defined and pursuant to the terms and conditions in the Agreement), and shall be eligible for the Grants referenced in Section 3.2 of the Agreement, provided Grant Recipient fulfills its employment and reporting requirements as set forth in Sections 3.2 and 4.1 of the Agreement. Failure to meet retention requirements under Section 3.2(d) and (e) of the Agreement, and to timely fulfill its reporting requirements under Section 4.1 of the Agreement, or any modification of the Loan Documents are made after the initial closing of the loan, shall result in the immediate termination of Grant Recipient’s eligibility to participate in the Program and Grant Recipient shall continue to be liable for all amounts due and owing (including without limitation interest payments) and all other obligations to VyStar under the terms and conditions of the Loan Documents.

Time is of the essence of the Grant Recipient’s reporting obligations set forth in Section 3.2 and 4.1 of the Agreement.

Grant Recipient consents and agrees City may make grant payments to which Grant Recipient is eligible under the Agreement directly to VyStar Credit Union on behalf of Grant Recipient.

IN WITNESS WHEREOF, this Consent and Joinder is executed by the undersigned this ___ day of _____, 202_.

GRANT RECIPIENT

Signed, sealed and delivered in our Presence:

Print Name: _____

By: _____

Print Name: _____

Its: _____

Print Name: _____

Exhibit C

Employment Report 2020

Please complete the form below as it relates to the COVID-19 Small Business Relief and Employee Retention Grant Program. Should you have any questions, please call (904) 255-5448 or email wkahn@coj.net. Send completed form to: City of Jacksonville, Office of Economic Development, 117 West Duval Street, Suite 275, Jacksonville, FL 32202, email wkahn@coj.net.

Company name: _____

Mailing Address: _____

Primary Contact Name: _____

Primary Contact Title: _____

Phone: _____ Email: _____

Signature*: _____ Reporting Date: _____

Print Name: _____

This form should be completed to document employment and wages, as required in the Agreement. The first page of this form must be completed. The second page can either be completed with all required information or a report can be run from the Company's HR system. Employees listed on this form must be on the Company's payroll as of February 28 of each loan year. The City reserves the right to audit the Company's records to verify the information included on this form. Confirmation of employee retention shall be calculated on a Full-Time Equivalent (FTE) Job basis, defined as a job or combination of jobs, in which the employee, or combination of employees, works for the company at least 40 hours per week, or is paid as if such work occurred. Only employees that reside within the Metropolitan Statistical Area, defined as residents of Duval, Clay, St. Johns, Nassau and Baker Counties, shall be eligible to count toward the employment requirement.

In order to verify the employment and associated wages, supporting documentation must be provided. This includes copies of one or more of the following: Company payroll records; Florida Department of Revenue Form RT-6 filings; IRS Form 941; or other employment documentation.

***By signing this form, I hereby certify that the information in this Job Report and any accompanying documents is true and correct to the best of my knowledge, information and belief. (Please include a signature from a Vice President or higher ranking officer or in the case of an LLC, a manager or managing member.)**

Employment Report

